

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the matter of:)

Request for Review by)

New York City Board of Education)

of Decision of Universal Service Administrator)

Docket Nos. 97-21 and 96-45

Ref.: Form 471 Applications: 200299 200310
Entity Numbers: 153070 152907

In this appeal, the New York City Board of Education ("NYC BOE") asks the Commission to review two applications that had been denied in full by the Administrator upon original application review and upon subsequent appeals. In both cases, SLD denied the applications due to "Ineligible entity receiving service." The Administrator's appeal decisions, in both cases, were dated April 20, 2001.

In this Commission appeal, NYC BOE argues that:

- Both applicants — the WNYE Television Station and UFT Teacher Centers — are part of the New York City Board of Education, an eligible entity.
- For E-rate application and service provider billing purposes, these component operations are kept separate only for internal accounting reasons.
- The individual funding requests in each application were, with one exception, for general network services and/or student instructional purposes.
- Each request should be reviewed as eligible services for an eligible entity.

NYCBOE/WNYE Television Station:

The New York City Board of Education's television station, WNYE-TV, is a broadcast-based distance-learning network. In a smaller school district, such a network would much more likely be implemented via a district-wide WAN (eligible if provided by a telecommunications carrier) and building LANs (eligible as internal connections). In New York City's case, with 1200 separate schools and limited building LANs, the broadcast network provides clear economic advantages for video distribution to the classrooms. As a general proposition, wired networks used by smaller districts and the

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broadcast network used by NYC BOE serve equivalent functions and should be treated equally under E-rate rules of technology neutrality.

There are admittedly several specific aspects of the NYC BOE broadcast network that need to be addressed for E-rate purposes, namely:

- The actual broadcasting system serves as a citywide WAN, but is not provided by a telecommunications carrier and, therefore, is ineligible for E-rate support. None of the funding requests in the referenced application are for broadcast-related services. Funding requests were made only for telecommunications carrier services supporting station operation.
- Because the system broadcasts at standard television frequencies, WNYE-TV can and does deliver educational programming to residential and other non-school locations that are ineligible for E-rate support. As indicated above, no costs components for such use were included in the referenced application.
- To defray station costs, a portion of the WNYE-TV broadcast airtime is leased to third parties deemed ineligible entities for E-rate purposes. The referenced application carefully allocates the funding requests for any jointly used telecommunications services between eligible NYC BOE and ineligible third party usage using the SLD's Form 471 Pre-Discount Cost Calculation Optional Grid.

The WNYE-TV application (#200299) includes the three telecommunications funding requests indicated below.

FRN 463205: Local telecommunications services, including POTS, analog data lines, and high bandwidth video services, are provided by Verizon – New York (a.k.a. Bell Atlantic). These are a part of the NYC BOE's broad telecommunications network and are used for eligible instructional services. For accounting purposes, in part to permit accurate allocation of expenses to ineligible third party users, billing (and E-rate applications) are kept separate.

FRN 468971: Cellular telephone service is provided by Verizon Wireless (a.k.a. Cellco Partnership). Upon review of recent SLD guidelines on eligible cellular usage, NYC BOE has determined that a significant portion of the requested funding is for operational, rather than instructional, use and may be deemed ineligible. No appeal is being made on the denial of funding for this request.

FRN 468972: Long distance telephone service is provided by Sprint. As with local service, this is a part of the NYC BOE's overall long distance network usage, with billing separated for accounting purposes.

NYCBOE/UFT Teachers Centers:

The New York City Board of Education provides telecommunications and Internet services to 243 Teacher Centers located in school classrooms throughout the City system. The Teacher Centers are used primarily by teachers for instructional preparation and staff development. Not infrequently, however, the Centers are also used for one-on-one or small group student instruction. Additionally, mobile phones are provided for teacher use throughout the school, and specifically to provide wireless Internet access to unwired classrooms.

As is the case with the television station discussed above, separate billing and E-rate requests are provided for the Teacher Centers for accounting purposes required to properly manage a school system of New York's size and complexity. (Teacher center services in a smaller school district would much more likely be provided as a minor part of overall district services). One specific reason to maintain separate Teacher Center accounting in New York City is that the services are provided under an agreement with the United Federation of Teachers ("UFT").

The UFT Teachers Centers application (#200310) includes the three telecommunications and Internet access funding requests indicated below.

FRN 448783: Local telecommunications services, including POTS, ISDN, and T-1 services, are provided by Verizon – New York (a.k.a. Bell Atlantic). These are a part of the NYC BOE's broad telecommunications network and are clearly located in eligible school buildings. Even if the Teacher Centers are treated as a separate subset of school classrooms, their secondary usage for direct student instruction should be sufficient to assure E-rate eligibility.

FRN 448785: Dedicated Internet access service is provided by Dorsai Embassy. Internet access is maintained as a separate Teacher Center service because such access is not yet otherwise broadly available throughout the schools. The availability of special Internet services is one reason that the Centers are often used for special pupil instruction. Separate access also facilitate filtering and monitoring of Teacher Center Internet usage for compliance with the Children's Internet Protection Act ("CIPA").

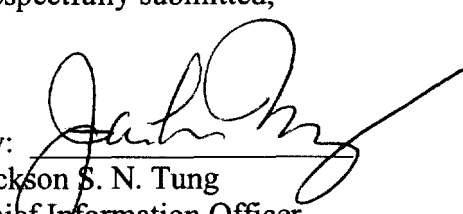
FRN 448787: Mobile telephone service is provided by Nextel of New York. The service, while billed to the Teacher Centers, is specifically provided to permit use by instructional staff throughout the schools — clearly an eligible mobile service. Additionally, as indicated above, the mobile phones are also used to provide wireless Internet access to students in unwired classrooms.

Appeal request:

By this appeal, we ask the Commission:

1. To reverse the Administrator's decision that WNYE-TV and UFT Teacher Centers are ineligible entities.
2. Remand both applications to the SLD for review and reconsideration.

Respectfully submitted,

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Dated: May 18, 2001